

IN THE MATTER OF	*	BEFORE THE
PAUL KENDALL & FRANK MARTIN	*	HOWARD COUNTY
Appellants	*	BOARD OF APPEALS
v.	*	CASE NO. BA 639-D
HOWARD COUNTY PLANNING BOARD &	*	
MANGIONE FAMILY ENTERPRISES OF	*	
TURF VALLEY, LP	*	
Appellees	*	

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### **DECISION AND ORDER**

On May 7, 2009, the Board of Appeals convened to conduct a hearing on the administrative appeal of Paul Kendall and Frank Martin (the "Appellants"). The Appellants are appealing the letter dated April 25, 2008 (the "Planning Board letter") from Marsha McLaughlin, Executive Secretary to the Howard County Planning Board, to Louis Mangione, Mangione Enterprises of Turf Valley, LP ("Mangione Enterprises" or "Appellee"). The letter informed the Appellee of the Planning Board's action to approve the Second Amendment to the Turf Valley Residential Subdistrict Final Development Plan ("the Second Amendment FDP") on April 24, 2008. The appeal is filed pursuant to Howard County Code Section 16.900(j)(2)(iii).

All members of the Board were present at the hearing and Chairman Walsh presided. Barry Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Appellants certified that notice of the hearing complied with the Howard County Code. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

This case is a *de novo* appeal and is being conducted in accordance with Section 2.210(a) of the Board's Rules of Procedure. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the Howard County Subdivision and Land Development Regulations, the General Plan for Howard County, the General Plan of Highways, and the Petition, as submitted by the Appellants, were incorporated into the record by reference.

The Appellants were not represented by counsel. Sang Oh, Esquire, represented Appellee, Mangione Family Enterprises of Turf Valley, LP. Paul Johnson, Deputy County Solicitor, represented the Howard County Planning Board.

As a preliminary matter, the Board heard oral arguments on the Preliminary Motion to Dismiss filed by Appellee, Mangione Family Enterprises of Turf Valley, LP. Upon consideration of Motion to Dismiss Appeal and for the reasons stated below, the Board determined to grant the motion and dismiss the appeal.

#### **Background**

Mangione Family Enterprises of Turf Valley is the landowner and developer of Turf Valley, a multi-use development in western Howard County, consisting of a hotel and conference center, condominiums, townhouses and single-family homes, plus commercial development. The development of Turf Valley is controlled in part by the Planning Board approved Turf Valley Multi-Use Subdistrict Final Development Plan ("FDP"), as amended. This FDP encompasses drawings depicting development areas and included development criteria consistent with the underlying PGCC (Planned Golf Course Community) Zoning district.

In 2008, Appellee apparently submitted proposed revisions to the approved First Amendment to the Turf Valley Residential Subdistrict Final Development Plan for the Planning Board's review. The Planning Board approved the Second Amendment FDP on April 24, 2008 and informed Appellee of its decision by letter on April 25, 2008.

Paul Kendall and Frank Martin are residents of Turf Valley who are opposed to the Second Amendment FDP. Their administrative appeal petition contends that the Planning Board failed to take into account its rules and regulations and exceeded its authority in approving the amendment, and that the FDP does not comport with the comprehensive sketch plan. They claim they are aggrieved because they are residents at the center of the development.

### **Discussion**

Pursuant to Howard County Code Section 16.900(j)(2)(iii), any person "specially aggrieved by any decision of the Planning Board and a party to the proceedings before it may, within thirty (30) days thereof, appeal said decision to the Board of Appeals in accordance with Section 501 of the Howard County Charter." The 30 day calendar period so provided is without exceptions.

Section 1.106. F of the Planning Board Rules of Procedure compels the Board, when exercising its administrative decision-making authority following a public meeting, to make a decision by issuing a letter as required by law. The Executive Secretary sends this notice of decision letter to the Petitioner, and, upon request, to other interested persons.

The Executive Secretary to the Planning Board is Marsha McLaughlin, the Director of Planning and Zoning. By letter dated April 25, 2008, she notified Appellee of the Planning Board's decision to approve the Second Amendment FDP and copied Appellants

as interested persons. Appellants filed their administrative appeal petition on Tuesday, May 27, 2008, the date stamped on the petition's top sheet.

In its Memorandum of Law attached to the Motion to Dismiss, Appellee argues that the 30-day filing period set forth in Howard County Code Section 16.900(j)(2)(iii), must be strictly followed because the right to appeal is wholly statutory. Appellee contends the appeal is untimely because Appellants filed their petition after the 30<sup>th</sup> calendar day following the Planning Board's decision letter.

Appellants insist that since Howard County Code Section 16.900(j)(2)(iii) contains the phrase that an appeal of the Planning Board decision be in "accordance with Section 501 of the Howard County Charter," and Section 501(d) authorizes appeals from a Board of Appeals' decision to the Circuit Court, and provides that such appeals be taken "in accordance with the Maryland Rules of Procedure," that the 30-day filing period is to be computed in accordance with Maryland Rule 7-203(a). This rule prescribes the time for filing appeals for judicial review of administrative agency decisions, including Board of Appeal decisions.

Appellants assert that the petition is timely because they did not receive notice of the Planning Board's letter of decision until April 28, 2008. Appellants maintain that Maryland Rule 7-203(a)(3) prescribes that the 30-day filing period does not begin to run until after the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

The phrase "in accordance with Section 501" is a procedural or claims-processing provision- it does not substantively qualify how the 30-day appeal period is to be calculated. Moreover, Section 501(d), the specific section upon which the Appellants' claim of

timeliness relies, does not apply to their appeal to the Board of Appeals/Hearing Examiner. It relates only to appeals of decisions from the Board of Appeals to the Circuit Court for Howard County, not appeals to the Hearing Examiner.

In the instant case, Md. Rule 7-201(a), applicable to judicial review of administrative decisions contains explicit qualifying language: "The rules in this chapter governs *actions for judicial review* of (1) an order or action of an administrative body..." (Emphasis added). The Maryland Rules are inapplicable to local administrative appeals and so defeats Appellants' reliance on Md. Rule 7-203 to save their petition. Neither the Howard County Board of Appeals nor Hearing Examiner is subject to the dictates of the Maryland Rules, because the Board is not a court of competent jurisdiction nor judicial tribunal within the meaning of the rules themselves. *See Fallston Meadows Community Ass'n v. Board of Child Care of Baltimore Annual Conference of United Methodist Church*, 122 Md. App. 683 at 697-698, 716 A.2d 344 at 351-353. (1998).

The times prescribed for filing appeals for administrative review is governed by the Howard County Code and local regulations.

### **Conclusion**

In this case, the governing provision is Howard County Code Section 16.900(j)(2)(iii). The 30-day period for this appeal followed April 25, 2008, the date of the letter informing Appellee of the Planning Board decision to approve the FDP Second Amendment. The 30-day period to appeal, including weekend days, ended on May 25, 2008. Because Appellants did not file their appeal until May 27, 2008, the appeal petition was filed beyond the allotted time and must be dismissed as untimely.

Order

Based upon the foregoing, it is this 16<sup>th</sup> day of July, 2009, by the Howard County Board of Appeals, **ORDERED**:

That the Petition of Appeal of Paul Kendall and Frank Martin in BA Case No. 639-D is hereby **DISMISSED**.

ATTEST:

HOWARD COUNTY BOARD APPEALS

Ann Nicholson  
Ann Nicholson  
Secretary

James Walsh  
James Walsh, Chairperson

Albert Hayes  
Albert Hayes

APPROVED AS TO FORM:  
HOWARD COUNTY OFFICE OF LAW  
MARGARET ANN NOLAN  
COUNTY SOLICITOR

Maurice M. Simpkins  
Maurice Simpkins

Barry M. Sanders  
Barry M. Sanders  
Assistant County Solicitor

Kevin Doyle  
Kevin Doyle

Henry Eagles  
Henry Eagles